

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

EVOLVED WIRELESS, LLC,)	
)	
Plaintiff,)	
)	C.A. No. 15-542-JFB-SRF
v.)	
)	JURY TRIAL DEMANDED
APPLE INC.,)	
Defendant.)	
EVOLVED WIRELESS, LLC,)	
)	
Plaintiff,)	
)	C.A. No. 15-543-JFB-SRF
v.)	
HTC CORPORATION and)	JURY TRIAL DEMANDED
HTC AMERICA, INC.,)	
)	
Defendants.)	
EVOLVED WIRELESS, LLC,)	
)	
Plaintiff,)	
)	C.A. No. 15-545-JFB-SRF
v.)	
SAMSUNG ELECTRONICS CO., LTD.)	JURY TRIAL DEMANDED
and SAMSUNG ELECTRONICS)	
AMERICA, INC.,)	
)	
Defendants.)	

**NOTICE OF SUPPLEMENTAL AUTHORITY RELEVANT TO EVOLVED
WIRELESS'S MOTIONS FOR SUMMARY JUDGMENT OF DEFENDANTS'
BREACH OF FRAND CLAIMS**

Evolved Wireless respectfully submits the attached opinion, *TCL Communs. Tech. Holdings, Ltd. v. Telefonaktientbolaget LM Ericsson*, No. 14-cv-0341 (C.D. Cal. Aug. 9, 2016), for the Court's consideration in ruling on Evolved's motions for summary judgment on Defendants' FRAND-related breach of contract claims.¹ Because this opinion is unavailable on the Lexis research database, Evolved did not locate this case when preparing its briefs on these motions.² Evolved's counsel only recently identified the opinion when it was referenced in another opinion that became publicly available in the same case on December 22, 2017.

This opinion is highly relevant to Evolved's motions because the court granted a motion for summary judgment of no damages on a breach of FRAND claim based on the ETSI IPR obligation where the party asserting the breach of FRAND claim failed to submit any evidence of damages until after the close of fact discovery—and here the Defendants did not submit any evidence of damages either. *See Op.* at 10-12. As the opinion notes:

In this case, there is no timely submitted evidence or methodology suggesting *any* basis for determining TCL's actual damages in this case. This is despite TCL's obligation to provide its calculation and all documents supporting that calculation under its mandatory 26(a) initial disclosures. In short, TCL's default simply amounts to a failure of proof.

Id. at 19 (emphasis original). TCL asserted as damages only costs from prior foreign litigation; it did not assert that same-suit costs could suffice to overcome summary judgment. *Id.* at 11. The opinion also notes that the disclosure of evidence of attorneys' fees after the close of fact discovery would harm the patent holder, who would not have the chance to take discovery into the nature and reasonableness of the work billed. *Id.* at 20.

Moreover, as indicated by the opinion, HTC's counsel in this case, Sheppard Mullin, was

¹ The three cases, with the motions and briefing indicated parenthetically, are against Apple (15-cv-542, D.I. 195, 221, 242, 268), HTC (15-cv-543, D.I. 204, 234, 257, 277), and Samsung (15-cv-545, D.I. 226, 246, 264, 284).

² The case is available on Westlaw at 2016 WL 6562075, but Evolved Wireless's counsel only has access to the Lexis database.

also counsel for the defendant TCL in that case. *Id.* at 14. Sheppard Mullin lost this same issue for TCL, but failed to identify this case or opinion for this Court. This Court should be aware of how nearly identical issues have been resolved in other districts.

Dated: December 28, 2017

Respectfully submitted,

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